Supreme Court U.S.
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No. 02-994

IN THE

Supreme Court of the United States

DWAYNE BISHOP,

Petitioner,

v.

BRUCE HUNTER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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Respondent Bruce Hunter, hereby requests that the Supreme Court deny Petitioner's, Dwayne Bishop, application for a petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit. In opposition to this application for writ of certiorari, Respondent would respectfully show the court the following:

STATEMENT OF THE CASE

The Petitioner has failed to accurately portray the facts from the point of view of his opponent (the Respondent) in this summary judgment case in compliance with FRCP 56. The events leading to the Respondent's 42 U.S.C. § 1983 claim for violations of the Fourth Amendment occurred on May 4, 1998. The Respondent's arrest, etc. occurred at the end of a political event located in a public park. The event was staged by two politicians to create the impression that they were "supporters" of a pristine environment. The public and press were invited. The Respondent and other Sierra Club members elected to attend and carry protest signs. Before the event, Hunter entered the park with his pasteboard protest sign and positioned himself where he could hear the politicians' remarks. During the politicians' remarks, Bishop positioned himself near Hunter and attempted to block the view of Hunter's protest sign.

After the event concluded, Hunter began to make his way to the park exit when Bishop grabbed his wrist and demanded that Hunter produce identification. After Hunter protested and loudly requested Bishop to release him, Bishop released his hold on Hunter's arm which allowed Hunter to retrieve his wallet from his rear pocket. Shortly after this occurred Bishop jabbed Hunter in the chest and then forcibly handcuffed Hunter and had him transported to jail. Hunter

was charged, at Bishop's request, with the misdemeanor assault of Bishop. After his release, Hunter appeared at the trial of the assault charge. The charge was dismissed when Bishop failed to appear for the trial. The assault charge was re-filed and, again, Hunter appeared for trial. Bishop failed to appear and the charge was dismissed a second time.

REASON FOR DENYING THE PETITION

I.

PETITIONER CANNOT ESTABLISH THAT EITHER THE DISTRICT COURT OR THE PANEL OPINION IS ERRONEOUS ON THE MERITS.

Unless this Court wishes to reconsider the body of law concerning qualified immunity and interlocutory appeals that this Court has crafted in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Mitchell v. Forsyth*, 472 U.S. 511 (1985); *Johnson v. Jones*, 515 U.S. 304 (1995); *Behrens v. Pelletier*, 516 U.S. 299 (1996); and overrule the summary judgment criteria that this Court crafted in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp v. Catrett*, 477 U.S. 317 (1986), there is no justifiable reason for this Court to grant Bishop a writ of certiorari to the Court of Appeals to the Fifth Circuit.

Bishop's summary judgment application for entitlement to qualified immunity was denied by the District Court because Bishop did not bottom his summary judgment claim to immunity on uncontested facts. The Court of Appeals agreed with the District Court and said that because conflicts exist between the Respondent's (Plaintiff's) and Petitioner's

(Defendant's) versions as to what occurred, neither court was in a position to determine Bishop's motion for summary judgment.

Bishop unlawfully wishes this Court to reconsider his summary judgment application for immunity on a disputed record. The only permissible and lawful way this court could consider Bishop's claim to immunity would be if he was able to present this Court with an undisputed record. Although it is not entirely clear what the factual basis for Bishop's claim to immunity is, it appears that Bishop believes that *Saucier v. Katz*, 533 U.S. 194 (2001) stands for the proposition if a police officer orders a citizen carrying a protest sign to "keep a distance" from two political dignitaries at a public political event and the citizen refuses, then the officer is privileged to forcibly arrest that citizen thusly entitling the officer to immunity from suit. There are several obstacles and problems with Bishop's position. Hunter denies that he did not "keep a distance" and, further, Hunter insists that there was no evidence that he posed a threat to either dignitary on the occasion in question. Importantly, Hunter insists that he was subjected to arrest only after the political function had ended and the dignitaries that police officer Bishop was assigned to protect had left the event. Hunter insists that his arrest and the violations of the Fourth Amendment he has made against Bishop as a consequence of his arrest, resulted not from a refusal to "keep a distance", but because Bishop falsely contended that Hunter had assaulted him. Hunter contends that his insistence on displaying a protest sign at the event was a pretextual reason for his arrest. If true, this would violate the First Amendment. *New York Times Co. v. Sullivan*, 403 U.S. 713 (1971). Unlike *Saucier*, this event occurred in a public park and not in military reservation where rules related to protests might be difficult.

CONCLUSION

The Writ of Certiorari should be denied.

Respectfully submitted,

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